

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE MICHAEL W. JONES
TENTATIVE RULINGS FOR JUNE 23, 2022 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, JUNE 23, 2022 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JUNE 22, 2022**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT LOCAL RULE 10.24.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0079958 CITIBANK v. METCALF, JAMES

The motion for judgment on the pleadings is dropped from the calendar. A full dismissal was entered on June 3, 2022.

2. M-CV-0081348 WILEY, THOMAS v. GOODNIGHT, DEBORAH

Further Hearing on Defendant's Ex Parte Application for Stay of Execution

The court declines to order any further relief apart from that already ordered on June 13, 2022 in the ex parte order. The ex parte application requests a ten (10) day stay. The application does not expressly seek any further forms of relief other than the 10 day stay, which has already been granted.

The stay ordered on June 13, 2022 remains in effect until June 26, 2022 at 4:00 p.m.

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3. S-CV-0039050 PACIFIC ALT ENERGY RES v. GLOBAL ALT

Review Hearing re Entry of Judgment

The appearances of the parties are required for the review hearing.

4. S-CV-0039958 BANK OF HOPE v. PARK, SUNGMIN

Defendants' Motion to Bifurcate and Sever Trial

Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied without prejudice to renew the request at the time of trial.
Bifurcation and severance issues are matters best addressed by the trial judge.

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5. S-CV-0040614 JOHNSON, AMY v. AIM & ASSOC

Defendants Danielle Fernandez and AIM & Associates, Inc.'s Motion to Strike the Second Amended Complaint (SAC)

The action returns to this court after remand by the Third District Court of Appeal, reinstating a second cause of action identified as assault and battery against defendant Danielle Fernandez; the fourth cause of action identified as respondeat superior against defendant AIM & Associates; and the seventh cause of action for general negligence against defendant Fernandez. The appellate court declined to address a motion to strike, which had previously been dropped as moot, referring the motion back to the this court for further determination.

In this motion, defendants seek to strike allegations requesting punitive damages. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) In order to claim punitive damages, a plaintiff must allege facts that a defendant is guilty of oppression, fraud, or malice. (Civil Code section 3294.) Conclusory statements in pleadings regarding oppression, fraud, or malice are insufficient to state a claim for punitive damages. (*Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872.) It is well established that punitive damages are available for assault and battery claims where there are allegations of fraud, oppression, or malice. (see c.f. *Boyce v. Evans* (1936) 14 Cal.App.2d 472, 480.) Punitive damages are only available under a respondeat superior theory where there is fault or misconduct on the part of the employer. (*CRST, Inc. v. Superior Court* (2017) 11 Cal.App.5th 1255, 1261.) The court reviews the motion keeping this in mind.

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5. S-CV-0040614 JOHNSON, AMY v. AIM & ASSOC

Plaintiff pleads punitive damages by attaching the Judicial Council form for exemplary damages attachment. She alleges punitive damages solely as to defendant Fernandez. The allegations include the following:

EX-2. The facts supporting plaintiff's claim are as follows:

Danielle Marie Fernandez made a differing report to the police than she did in the Witness statement that affected the case negatively that was later sealed by the Judge and not allowed to be read.

Danielle Marie Fernandez made a request for a Restraining order that could have prohibited Plaintiff from working after a false allegation that Plaintiff had contacted Danielle Fernandez through the website Linked In, that was determined to be false by the District Attorney, and the order withdrawn.

Danielle Marie Fernandez refused to provide proof from her employer verifying whether she was fired or quit.

Danielle Marie Fernandez required Plaintiff to buy addictive medication ten months after the incident as she was aware the Plaintiff was a drug and alcohol counselor and against Plaintiffs values.

Danielle Marie Fernandez refused to provide proof of injury or medical treatment other than a massage.

Danielle Marie Fernandez partially disabled the Plaintiff and caused severe injury after verbally abusing, harassing, assaulting and battering the Plaintiff costing over \$15,000 in legal and medical damages.

These allegations are not sufficiently tied to the assault and battery claim, failing to plead facts necessary for malice, fraud, or oppression. The motion is granted in light of the pleading deficiency.

The final issue to address is whether plaintiff should be afforded leave to amend. The court considers the unique posture of this case, which results in a portion of a prior pleading now being reinstated along with the Third District Court of Appeal expressly identifying claims within plaintiff's SAC that were not expressly identified by plaintiff. In light of the case's posture and in consideration of the appellate court's analysis in its opinion, the court determines that further leave to amend would be proper here. At a minimum, leave will allow for a fully integrated pleading to be presented.

Plaintiff is afforded leave to file a fourth amended complaint. This leave, however, is limited to including only the assault and battery cause of action against defendant Fernandez; the general negligence cause of action against Fernandez; allegations of punitive damages solely as to defendant Fernandez; and the respondeat superior cause of action against defendant AIM & Associates.

The fourth amended complaint shall be filed and served by July 8, 2022.

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6. S-CV-0042190 I.M. v. ROSEVILLE CITY UNIFIED SCHOOL DISTRICT

Amended Expedition Petition to Approve Compromise of Disputed Claims for Minor I.M.

The amended petition is granted as prayed. After careful consideration of the petition and supplemental declaration, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

The OSC hearing set for June 27, 2022 is vacated.

7. S-CV-0043920 HUYNH, ANH v. SUTTER HEALTH

Plaintiff's Amended Motion for Leave to File Second Amended Complaint (SAC)

The motion is granted. In the current request, plaintiff seeks leave to file a second amended complaint (SAC). The case comes to the court with the unique posture of having been remanded from the federal court with the first amended complaint filed while the action was pending before the federal court. State courts, including California, will generally give effect to the pleadings filed in federal court prior to remand back to state court. (see *c.f. Laguna Village, Inc. v. Laborers' Internat. Union of North America* (1983) 35 Cal.3d 174, 180-181; see also *Dauenhauer v. Superior Court* (1957) 149 Cal.App.2d 22, 26.)

In this instance, the court will give effect to the first amended complaint (FAC) filed on September 30, 2020, treating the FAC as the operative complaint in this action. (*Laguna Village, Inc. v. Laborers' Internat. Union of North America* (1983) 35 Cal.3d 174, 180-181.) The court determines that judicial economy; lack of prejudice to the parties; and avoidance of forfeiture all support treating the FAC as the operative pleading in this action. (*Ibid.*)

With the operative pleading identified, the court exercises its discretion and grants plaintiff leave to file the SAC. (Code of Civil Procedure sections 473(a)(1), 576.) Plaintiff shall file and serve her second amended complaint within 10 days of service of the signed order after hearing.

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8. S-CV-0045830 K.C. v. ROCKLIN UNIFIED SCHOOL DISTRICT

Defendant's Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is overruled. A demurrer tests the legal sufficiency of the pleading, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) All properly pleaded facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The allegations within the complaint, when read as a whole, allege sufficient facts to support all three causes of action.

Defendant shall file and serve its answer or general denial by July 8, 2022.

A case management conference is set for Monday, July 18, 2022 at 2:00 p.m. in Department 40.

9. S-CV-0046060 WALKER, KENNETH v. DAVIS, THOMAS

The reserved hearing for the motion for publication is dropped from the calendar as no moving papers were filed with the court.

10. S-CV-0046298 AIG PROP CASUALTY CO v. BERVID CUSTOM BUILDING

Chad Stepan's Pro Hac Vice Application

The application is granted as prayed.

11. S-CV-0046498 NUNEZ-MENDONSA, ANGELL v. KINDERCARE EDU

The reserved hearing date for the motion for summary judgment is dropped from the calendar. A full dismissal with prejudice was entered on May 5, 2022.

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12. S-CV-0047108 LINDSTROM, JAMES v. BURKHART SCHNEIDER, ANIKA

Plaintiffs' Motion for Summary Adjudication

Preliminary Matters

As an initial matter, defendants assert the current motion is not ripe and moot due to a stipulation entered into by the parties to allow for the filing of a first amended complaint. Defendants' argument appears to be that the pending first amended complaint - which has not been filed with the court - will require the filing of another answer so as to render the request for summary adjudication unripe and moot. The court disagrees with this assessment.

The ripeness requirement is a doctrine of justiciability, which prevents courts from issuing purely advisory opinions. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-171.) “ ‘The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical set of facts.’ [Citation.]” (*Ibid.*) The current motion is aimed at the operative pleading on file with the court at this juncture, namely, defendants' answer to the original complaint. It challenges the adverse possession affirmative defense alleged by defendants as their twelfth affirmative defense. Contrary to defendants' assertions, the request for summary adjudication addresses a definite, concrete controversy involving a legal defense still pending before this court. The motion is ripe for adjudication.

Further, the stipulation allowing plaintiffs to file a first amended complaint does not render this motion moot. An amended complaint generally supersedes the prior complaint and furnishes the sole basis for the cause of action. (*Bassett v. Lakeside Inn, Inc.* (2006) 140 Cal.App.4th 863, 869-870.) The prior complaint is “ ‘dropped out of the case and ceases to have any effect as a pleading, or as a basis for a judgment. [Citation.]’ “ (*Ibid.*) The essential point being that the amended pleading is *filed* with the court. Plaintiffs have not filed a first amended complaint. Defendants, in turn, have not filed an answer to the first amended complaint. The operative pleadings remain the complaint and answer. The court will proceed to review the substance of the request since the motion is ripe for adjudication and there are no issues of mootness.

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12. S-CV-0047108 LINDSTROM, JAMES v. BURKHART SCHNEIDER, ANIKA

Ruling on Motion

The motion is granted. In the current request, plaintiffs seek summary adjudication as to defendants' twelfth affirmative defense for adverse possession. A party to the action may move for summary adjudication if that party contends there is no merit to one or more of the affirmative defenses. (Code of Civil Procedure section 437c(f)(1).) In reviewing a motion for summary judgment/adjudication, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court reviews the motion keeping this in mind.

Adverse possession requires the claimant to establish (1) actual possession constituting reasonable notice to the owner; (2) hostile possession to the owner's title; (3) holding the property as the claimant's own; (4) continuous and uninterrupted possession for five years; and (5) payment of all taxes and assessments for the property. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 325.) Plaintiffs submit evidence showing defendants have produced no documents establishing payment of property taxes or assessments for the subject property. (Plaintiffs' SSUMF Nos. 10, 11.) Plaintiffs also submit evidence of defendant Anika Schneider's admission that she has no ownership interest in the property. (Id. at No. 12.) This evidence is sufficient to negate essential elements of defendants' adverse possession affirmative defense, shifting the burden to defendants to establish a triable issue of material fact.

Defendants have submitted sufficient evidence to establish a triable issue as to their twelfth affirmative defense. In light of this, they fail to meet their burden and summary adjudication is warranted against the twelfth affirmative defense for adverse possession. For the foregoing reasons, the motion is granted.

13. S-CV-0047430 LARSON, JESSIC v. FRISELLA, FRANK

The motion to set aside is continued to Tuesday, July 12, 2022 at 8:30 a.m. in Department 40.

14. S-CV-0047458 NEPTUNE INVEST v. DUMKE, MIKE

The two motions to compel further discovery responses are continued to Thursday, June 30, 2022 at 8:30 a.m. in Department 42.

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15. S-CV-0047812 WALKER, JESSICA v. PARSONS, TIMOTHY

Defendants' Demurrer to the Complaint

Preliminary Matters

As an initial matter, the court will not consider plaintiffs' substantive arguments in the opposition to the demurrer as there is no proof of service in the file demonstrating plaintiffs served defendants with the opposition.

Ruling on Demurrer

The demurrer is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) There is no concern with the likelihood that the complainant will prevail or whether the complainant has evidence to support the allegations. (*Gervase v. Superior Court* (1995) 31 Cal.App.4th 1218, 1224.) Indeed, for the purposes of the demurrer, all material facts are deemed true no matter how improbable those facts appear. (*Ibid*; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The complaint, when read as a whole, alleges sufficient factual allegations to support each of the nine causes of action.

Defendants shall file and serve their answer or general denial by July 8, 2022.

Defendants' Motion to Strike the Complaint

Preliminary Matters

As an initial matter, the court will not consider plaintiffs' substantive arguments in the opposition to the motion to strike as there is no proof of service in the file demonstrating plaintiffs served defendants with the opposition.

Ruling on Motion

The motion is granted in part. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The language in paragraph 20 is not relevant or properly pleaded and is stricken from the complaint. The remaining allegations are relevant and sufficiently

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15. S-CV-0047812 WALKER, JESSICA v. PARSONS, TIMOTHY

pleaded to support the claims for attorney's fees and punitive damages under Civil Code section 1942.5.

The challenged language in paragraph 20 is stricken from the complaint without leave to amend. The remainder of the motion is denied.

Defendants shall file and serve their answer or general denial by July 8, 2022.

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16. S-CV-0047868 MELGER, THOMAS v. SMART AND FINAL

It is noted that defendants reserved two hearing dates for two separate motions to set aside default. Defendants, however, only filed a single motion. The second reserved hearing date for defendants' motion to set aside default is dropped from the calendar as no moving papers were filed with the court.

Defendants' Motion to Set Aside Default

The motion is granted under Code of Civil Procedure section 473(b). Defendants have made a sufficient showing of mistake, inadvertence, and/or excusable neglect.

The default entered on March 24, 2022 is set aside.

Defendants may re-notice their demurrer for an available civil law and motion date. Contact the clerk's office for date availability.

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17. S-CV-0048133 DENTON, MONICA v. SAMUEL MERRITT UNIV

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

The unopposed motion is granted. The court has broad discretion in determining whether a class action settlement is (1) fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389.) Further, the court reviews the moving papers along with the entirety of the court file to determine that the settlement is genuine, meaningful, and consistent with the underlying purposes of the PAGA-related statute. (Labor Code section 2699(1); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110.) The court must also determine whether the PAGA settlement appears fundamentally fair, reasonable, and adequate. (*Ibid.*) The court has carefully reviewed and considered the joint stipulation regarding class action and PAGA settlement and plaintiff's moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, reasonable, genuine, meaningful, and consistent with the purpose of PAGA.

For the purposes of the settlement, the court hereby certifies the class as defined in paragraphs 1.4 and 1.10 of the Class Action Settlement Agreement. The court preliminarily approves the Class Action Settlement Agreement with the express modification that the charitable institution to receive distribution of any cy pres is identified as West Oakland Health. The court approves the proposed form of the notice, and incorporates by reference the findings and orders outlined in the proposed order along with identifying West Oakland Health as the charitable institution to receive distribution of any cy pres.

The final approval hearing is set for Thursday, October 27, 2022 at 8:30 a.m. in Department 42.

18. S-CV-0048216 HIGHLANDS RESORT CONDO ASSN v. ASHFORD HOSPITALITY TRUST

The motion to compel arbitration is continued to Thursday, June 30, 2022 at 8:30 a.m. in Department 42.